

CP 2007

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

W.P. NO. 84 / 2000

PETITIONERS

- 1) Krishna Kumar Dewangan,
S/O. Sri Kedar Nath Dewangan,
Aged about 38 years,
Occupation - Nil,
Resident of Tah. & Post Bilaigarh,
District Raipur (C.G.)
- 2) Manohar Prasad Choudhary,
S/O. Shri Tej Ram Choudhary,
Aged about 48 years,
Occupation - Nil,
P.O. Kidorimal Nagar,
District Raigarh (C.G.)

R. No. 22/12/2000
Presented by Shri K. B. Singh
dated 12-12-2000

Vs.

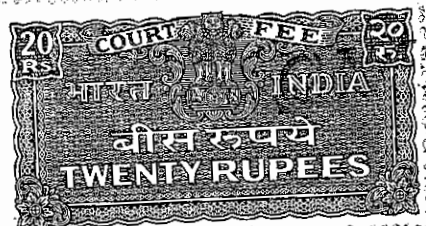
RESPONDENTS

- 1) State of Chhattisgarh,
Through Secretary,
Panchayat and Social Welfare
Department, D.K. Bhawan,
Raipur (C.G.)
- 2) Director of Panchayat and
Social Welfare Department,
Govt. of Chhattisgarh,
Raipur (C.G.)
- 3) Divisional Dy. Director,
Panchayat and Social Welfare
Department, Bilaspur Division
Bilaspur (C.G.)



WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION
OF INDIA FOR ISSUANCE OF WRITS IN THE NATURE OF
CERTIORARI, MANDAMUS, DIRECTIONS OR ORDERS ETC.

IN CHARGE
Criminal Cases Section
Office of the Advocate General
State of Chhattisgarh
BILASPUR



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DIVISION BENCH, HON. W. A. SHISHAK, CHIEF JUSTICE,
AND HON'BLE MR. JUSTICE R.S. GARG.

W.P.No. 84 / 2001

Krishna Kumar Dewangan and another : PETITIONERS

VERSUS

State of Chhattisgarh and ors. : RESPONDENTS

Mr. Ashish Shrivastava for the petitioners.

Mr. N.K. Shukla, Deputy A.G. for the Respondents.

Petition is finally heard.

ORDER

(13.3.2001)

By this petition under Article 227 of the Constitution of India the petitioners seek to challenge the correct-ness, validity and propriety of the order dated 7.8.1998 passed in transfer application No. 3440 / 88, (Krishna Kumar Dewangan and another Vs. State of Chhattisgarh and others) by the State Administrative Tribunal.

2. The case of the petitioner no.1 before the Tribunal was that he was appointed as Part time secretary in Gram Panchayat with effect from 23.7.79 on a monthly salary of Rs. 30/-. According to the petitioner no.2 he was appointed as a part time secretary w.e.f. 1.4.79. Petitioner no.2 was appointed on honourary basis and no remuneration was paid to him. The petitioners say and submit that the State government took a policy decision to absorb all part time secretaries employed by the Gram Panchayts appointed prior to 7.9.79. in the Government service on the post

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of Gram Sahayak. According to the petitioners, respondent no.3, the Joint Director, Panchayat and Social Welfare department, Bilaspur, after scrutinising the qualification and eligibility of the petitioners appointed them as Gram Sahayak. The petitioner no.1 was appointed under Annexure D and the petitioner no.2 was appointed under Annexure E on the terms and conditions contained in the said order. Thereafter, notice dated 12.1.1988 was issued by the District Deputy Director to the petitioner no.1 alleging that he had obtained the appointment by playing fraud and making a bogus claim of having worked as a Part time Secretary while in fact he did not work on the said post. Annexure F is the copy of said notice dated 12.11.1988. Petitioner no.1 was served on 12.2.88. He was required to submit his reply within four days but he did not submit any reply as according to him the termination order was ^{already issued on 4.2.88.} served upon him. Petitioner no.1 submits that his services were terminated much before service of the show-cause notice. Similarly, the services of petitioner no.2 were terminated vide order dated 20.1.88 and the said termination was without any notice ~~being issued~~ to him. The petitioners submitted their representation to the authorities, but as they did not receive any favourable reply, they were constrained to file the proper proceedings challenging the termination of their services.

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3. The respondents in their return filed before the State Administrative Tribunal submitted that the petitioners did not avail of the alternative opportunity made available to them of filing of an appeal to the Director, Panchayat and Social Welfare Department against the orders of termination and as such the petition deserved dismissal. It was also submitted that ^{as} each of the petitioners did not work with the Panchayat and after lodging a false and bogus claim, obtained the favourable order in their favour, the authorities were justified in terminating their services. It was also contended by the respondents that the certificates on which strong reliance was placed by the petitioners were in fact fake and fictitious. The State also submitted that show-cause notices were issued to the petitioners but they did not submit any reply to the same and the authorities were left with no option except to terminate the services.

4. The petitioners filed a rejoinder to the petition and submitted that petitioner no.2 did make a representation on 24.2.88. For petitioner no.1, it was submitted that he also submitted a representation to the Director, Panchayat, Bhopal, personally. It was also submitted in the rejoinder that the certified and verified list of part time secretaries whose initial appointments were approved by the Collector, were sent to the Directorate. According to them their names were included in the said list after due verification, therefore, their services could not be terminated.

5. After hearing the parties, the learned Tribunal recorded a finding that no proper opportunity of submitting reply to the show-cause notice was provided to the petitioners. It also held that the petitioner no.1 was served after the orders of termination were passed and the petitioner no.2 was not ~~heard properly~~ ^{issued any notice.} The learned Tribunal after recording the finding in favour of the petitioners proceeded to consider the matter on merits. After entering into the arena of the question of disputed facts, it recorded a finding that it was not possible for either of the petitioners to work with the concerned Gram Panchayat as Gram Sahayak / Sachiv.

6. After recording the finding on those questions of disputed facts, undisputedly, without any inquiry, the Tribunal dislodged the claim of the petitioners and dismissed their petition. Being aggrieved by the said order the petitioners have come before this Court.

7. Shri Ashish Shrivastava, learned counsel for the petitioners submits that in view of the findings recorded by the tribunal that no proper opportunity was given to the petitioner to make proper representation, the tribunal was obliged to set-aside the termination order and require the authorities to make proper inquiry after giving due and proper opportunity to each of the petitioners. He submits that the Tribunal could make an inquiry into the disputed facts but simply after appreciating the pleadings it could not record such findings contrary to the interest of the petitioners.

8. Dr. Shukla, learned Deputy Advocate General on the other hand supports the order passed by the Tribunal inter alia contending that there is no scope for any interference in this petition in view of the positive findings recorded by the Tribunal that the petitioners could not work as Panchayat Sahayaks/ Sachiv. He submits that the Tribunal has given proper reasonings and has recorded positive finding against the interest of the petitioner and as the findings are based on due appreciation of facts, the same can not be interfered with.

9. We have heard the parties at length and perused the complete record.

10. It is now not the case of the State Government that proper opportunity was given to either of the petitioners to file reply to the show-cause notice. undisputedly, the respondent no.1 was served ^{with} ~~of~~ the show-cause notice after his services were terminated. Similarly the findings recorded in favour of petitioner no.2 that no show-cause notice was served upon him and simply the order of termination was received by him, it has to be held that no proper opportunity of hearing was afforded ~~xxx~~ to either of the petitioners. Issuance of show-cause notice is not an empty formality. When an authority issues a show-cause notice or the notice to show-cause against ~~x~~ the proposed action, it requires the delinquent / noticee to submit his case before the said authority against the proposed action.

If an authority does not issue any notice, then in such circumstances the order passed by such authority can always be termed as an arbitrary or whimsical order. In a case where the notices are issued to the parties but either the same are not served or there is no proof that notices were served upon the noticees then the law says that in absence of such proof, it must be held that there was no legal or valid service. In the present case the findings of the Tribunal ^{are} that petitioner no. 1 was served ^{with} ~~the~~ the notice to show-cause after the termination order was issued and the petitioner no. 2 was at all not served of the notices. In absence of the notice to show-cause, a party could not have any right to make a representation. When the authority does not issue a notice to show-cause against the proposed action, then such delinquent/officer/noticee does not know as to what case he has to meet. In the present case in view of the findings, there is no escape but for recording ^{as} ~~the~~ finding, that the petitioners were not given due and legal opportunity to show-cause against the proposed action.

11. The Tribunal, in the opinion of this court after recording the findings should have set-aside the order of termination ^{as} ~~it~~ it had no jurisdiction to enter into arena of questions of disputed facts. The Administrative Tribunals Act authorises the Tribunal to make an inquiry and record the evidence but if the Tribunal does not make an inquiry nor records any evidence and proceeds to decide the matter on the pleadings of the parties and tries to reach a finding relating to fact then such an approach certainly

would be contrary to the very provisions of the Administrative Tribunals Act. An Authority, be it the Court or Tribunal, can not record a finding of fact without recording the evidence or making some inquiry whether regular or summary. When some body asserts a fact and the other party denies the same, then ^athe dispute arises in the matter. Whenever a triable issue arises, the court is required to make an inquiry-. In the present case, the Tribunal being alive to the situation did not give an opportunity to the petitioner to lead the evidence in support of their contention that they were duly appointed by the respective Gram Panchayats on the post of Gram Sahayaks / Sachiv. In the case like present when a list submitted by the Collector shows that the petitioner did work as Panchayat Sahayak / Sachiv, then the presumption was in favour of the petitioners. The said presumption ~~with that an inquiry was made~~ would only be dislodged or negatived ~~only~~ if the respondents led some evidence to satisfy the judicial discretion of the court / tribunal that said list was not prepared in accordance with law or was a result of some fraud played by some-body at some level.

12. The findings recorded by the Tribunal that neither of the petitioners was appointed as a part time Panchayat Sahayak / Sachiv, can not be approved. The said finding deserves ^{to} and is accordingly quashed.

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As the principle of 'audi alter^am partem' ^{has} ~~have~~ been violated in full and orders of termination were passed without giving proper opportunity to the petitioner to submit their case before the concerned authority, we are of the opinion that orders of termination must be quashed. The orders are accordingly quashed. The respondents are given liberty to issue fresh show-cause notice / notices to the petitioners, ask for their reply and make an inquiry into the allegation and counter allegation. Respondents shall be free to pass orders in accordance with law after taking into consideration the replies of the petitioners and holding an inquiry if an occasion arises. As the orders of termination are being quashed, the petitioners shall be re-instated to their basic posts with all consequential benefits to be paid by respondents. There shall be no order as to costs.

Sd/-
Chief Justice

Sd/-
R.S. Garg
Judge

Jyotishi

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